

**MINUTES OF LAYTON CITY  
COUNCIL WORK MEETING**

**MAY 15, 2014; 5:30 P.M.**

**MAYOR AND COUNCILMEMBERS  
PRESENT:**

**MAYOR BOB STEVENSON, JOYCE BROWN,  
TOM DAY, JORY FRANCIS, SCOTT FREITAG  
AND JOY PETRO**

**STAFF PRESENT:**

**ALEX JENSEN, GARY CRANE, TERRY COBURN,  
BILL WRIGHT, PETER MATSON, AND THIEDA  
WELLMAN**

**The meeting was held in the Council Conference Room of the Layton City Center.**

Mayor Stevenson opened the meeting and expressed appreciation for the representatives with Macquarie being here. He turned the time over to Mr. Nick Hann.

**AGENDA:**

**DISCUSSION – MACQUARIE PROPOSAL**

Mr. Hann, Senior Managing Director, introduced Joe Shelton and Kit Eldridge with First Solutions; Mike Lee, First Solutions Technology Officer and proposed candidate to lead the wholesaler part of the transaction; and Ryan Hodges with First Solutions.

Mr. Hann gave a brief overview of the proposal. He indicated that the proposed \$18 to \$20 per month utility fee would be further defined in Milestone 2, but they were confident that the rate would be closer to the lower amount. Mr. Hann said the same basic service from other providers would be about \$35 a month and there would be significant savings for all services compared to current providers. He said the wholesaler would receive a transport fee from the ISPs for use of the system, which would go back to the cities to help offset their debt service; without the expansion UTOPIA would never pay enough to fund the debt.

Alex Jensen, City Manager, asked Mr. Hann to provide a little information about Macquarie.

Mr. Hann gave a brief history of Macquarie. He indicated that for the last 20 years they had been a significant installer of this type of infrastructure. Mr. Hann said they had invested over 50 billion dollars in similar assets around the world and they provided infrastructure services to about 100 million people around the world every day. Mr. Hann explained public private partnerships.

Gary Crane, City Attorney, asked Mr. Hann to explain Milestone 1 and the process to get to this point.

Mr. Hann explained their involvement with UTOPIA since last year. He indicated that Milestone 1 was a feasibility study for the cities relative to technical issues, financial issues; and it included a proposal from Macquarie for implementation of the study. Mr. Hann said they delivered the formal Milestone 1 Report at the end of April; the cities had 60 days to determine whether or not to move into the next Milestone. He said the next Milestone was more legally intensive. Mr. Hann said the cost of Milestone 1 was just under \$500,000; the cost of Milestone 2 was just under \$1,000,000. He said the cities could back out at anytime but would be obligated to reimburse Macquarie for their costs.

Gary said in Milestone 1 they had looked at some of the construction firms that would be interested in construction of the network, and some firms that were interested in running the network.

Mr. Hann said yes; Macquarie was able to attract some of the largest and most successful companies to do this. He said they had received 7 proposals from design build contractors, which they narrowed down to 2; Corning and Black & Veatch for laying of the fiber. Mr. Hann said for equipment and maintenance they had selected 2 firms; Fujitsu and Alcatel-Lucent.

Mayor Stevenson asked if the installation companies would hire local people.

Mr. Hann said yes; it would be local companies that would do the work under the management of the larger companies.

Mayor Stevenson asked if during the 2 ½-year installation period, would Macquarie be open to negotiating with other communities to come online.

Mr. Hann said they were already being approached by other communities. He said they were very interested in servicing those other cities; they would be cost as a separate item. Mr. Hann said if they joined the UTOPIA network they would pay a premium to UTOPIA, which would come back to the cities; the UTOPIA cities would determine that premium.

Mayor Stevenson asked what percentage of the United States had fiber optic.

Mr. Mike Lee said the United States was 21st with other nations.

Mr. Hann said fiber had almost unimaginable capacity; the fiber installed 30 years ago was still being used. He said the electronics on the ends of the fiber had to be updated.

Mr. Lee said A T & T and Google had announced an expansion of their fiber optic systems.

Mr. Hann said there was a huge swing back to fiber from wireless because of the reliability and capacity. He said there had recently been more emphasis on fiber.

Mr. Lee said the requests for fiber optics had gone through the roof.

Councilmember Petro asked if there was an option for each city to come up with their own package; could the \$20 fee go to a cable type of fee instead of a phone.

Mr. Hann said absolutely; the ISPs would provide a wide range of services. He said currently UTOPIA didn't have a very good video package; there was something for everyone in this proposal. Mr. Hann said the ubiquitous build out allowed for many uses including traffic light control; meter reading; public safety; free WiFi for all citizens in the parks. He said as the model built out, there really was something for everyone. He said residents were currently paying \$8.30 for UTOPIA and they were receiving nothing.

Dave Burr with Sumo, a service provider, indicated that they were offering more and more services because of the availability. He said 75% of their customer base was over 55 years old.

Councilmember Francis asked about the price index increase in the fee; could the fee be capped.

Mr. Hann said that was an issue being raised by many of the cities. He said it could be done, but they needed to work through the details. Mr. Hann said they were proposing an indexed escalation of the fee but they would be happy to cap it at a certain point. He said with no escalation today that fee would need to be \$29 a month. Mr. Hann said they were open to exploring those options. He said they needed the increase because costs for labor and components would be increasing.

Councilmember Petro asked Mr. Hann to discuss what would happen if not all of the cities became involved.

Mr. Hann said they certainly wanted to see all of the cities come on board. He said they would be happy to continue to provide the services they were currently receiving without additional build out, but UTOPIA would have to consider what a city that opted out would have to be charged to stay on the network.

Tim Pales, Planning Commissioner, asked about individuals opting out. He said he would refer to this as a utility tax. Commissioner Pales said from the previous presentation, he understood that the utility tax would be paying for the previous debt and the providers would be making their money from the things over and above the utility tax.

Mr. Hann said he would prefer to call it a fee because there was a genuine service being provided.

Commissioner Pales said not necessarily if people didn't use it.

Mr. Hann said the utility fee didn't pay the existing debt; it paid for the build out of the network to every address, and for refresh and maintenance of the network. He said the existing debt would be repaid by the revenues the network would generate, if citizens opted for premium services. Mr. Hann said those revenues would go back to the cities to defray the existing debt. He said the economics of the proposal worked based on a ubiquitous build out. Mr. Hann said effectively this became a utility like water, electricity or garbage collection; every citizen paid for the service whether they used it or not.

Commissioner Pales said he felt that this became a subsidized government network that would compete with private companies that already provided the service. He said he was a retired telephone manager, and the UTOPIA plan was a bad plan to start with; it was undercapitalized and over promised. Commissioner Pales said several years later the City doubled-down and bonded for more; now everyone was going to have to subsidize this network because of a bad decision. He said they would provide some good services, and he understood that the train had already left the station, but the City was in an untenable position with poor choices; this was the least offensive of the choices because Macquarie was offering something. Commissioner Pales said because of the way the City got into the situation in the first place, he felt that residents needed to have the ability to opt out of having to pay this, because it was a bad decision in the first place. He said to maybe mitigate the opt outs, the basic package should be sweetened and offer more than 3/10; it should be more of a 10/50 with possibly telephone service on top of that, then people wouldn't have the incentive to opt out and keep the service that they already had.

Mr. Hann said UTOPIA was undercapitalized and perhaps over promised and underperformed. He said that was something Macquarie was guaranteeing to fix. The delivery was something they were guaranteeing to fix. Mr. Hann said opinion was divided on whether this should be a basic infrastructure that everyone was entitled to receive, or whether it should be an entirely market based service. He said one of the main reasons the United States was 21st in the world for fiber penetration was because the United States had monopoly providers of telephone infrastructure who had no incentive to make additional investment. They were using their control of infrastructure as a barrier to entry and they had no incentive to upgrade the infrastructure except on a cherry-picking basis in selected markets.

Commissioner Pales said if a network was subsidized, it made it much easier. He said people should have the option to opt out of this.

Mr. Hann said the model didn't work if people had the option to opt out.

Commissioner Pales asked what Macquarie's rate of return would be.

Alex said this was meant to be a presentation that would allow the Council to ask questions, not to debate

the merits based on personal feelings.

Commissioner Pales said he understood, but he was trying to make the best of another poor alternative. He said this was the best solution that he could see, but there were things that needed to be addressed that could make it better.

Alex said those were questions that a lot of the various cities were asking. He said he thought Macquarie and the cities were trying to find a way to navigate that issue, because it would be a concern on the part of some people.

Councilmember Day said those were valid concerns. He said if a citizen didn't want the fiber optics, and didn't pay the fee, the cities would shut off a service that the citizen didn't want anyway. How were they going to guarantee the payment? Councilmember Day said if a citizen didn't pay his water bill the water was shut off; if the fiber was turned off he would be happy because he didn't want it in the first place.

Alex said he would assume that there would be some consequences. He said there were a lot of questions that would have to be addressed and he hoped that the cities didn't make the decision of going forward or not going forward based on individual subscriber decisions that would be raised and solved down the road. Alex said this was a very large, very complex issue. He said all of those issues had to be raised and had to be addressed, but the timing of when that took place was very critical; what was being discussed now was the big issue.

Councilmember Day said from his perspective, as someone who would be voting on this, that was probably the biggest concern he got from the citizens; they weren't questioning whether it was going to work or whether it was the fastest, they were questioning the fact that they would be taxed for something they may not want. He said that was a basic issue that needed to be answered sooner rather than later for him.

Mayor Stevenson said if the City allowed for an opt out or opt in option, and half of the citizens opted out, the fee would very likely be \$36 a month instead of \$18. He said this situation existed, and if everyone didn't opt in, the citizens were still going to be making a payment, it would just be paid through property tax.

Councilmember Day said he understood that. He said the projected take rate was 30 to 50%, which meant that there was 50% that wouldn't take it and would be taxed for something they didn't want.

Mr. Hann said those percentages were for premium services.

Councilmember Francis said the residents were on the take right now for \$8.30 for nothing. He said if they opt out for a bad decision by officials that they elected 10 or 11 years ago, he felt that they should still be on the hook for \$8.30 because he didn't think it was fair to off-load that cost onto everyone else that did take it. Councilmember Francis said he could see an opt out, but he thought that they should still be charged for their share of what it would be whether this deal went through or not.

Mayor Stevenson said everyone could agree that this was probably a bad decision in the beginning, but the problem still had to be resolved. He said the bottom line was that this was the best option the cities had to try and get this taken care of. Mayor Stevenson said right now for a telephone line and basic internet from Comcast he paid \$119.46 a month. He said if the City charged him \$20, even if he didn't want the service, it would drive the Comcast bill down and he would still be dollars ahead. Mayor Stevenson said his understanding was that that was exactly what took place in Provo. He said residents in Layton couldn't get the same rate from Comcast as they did in Provo, because of the competition from Google Fiber.

Mayor Stevenson said hopefully in correcting this mistake, people would be able to get fiber in their

homes for a much lower cost. He said a lot of people had indicated that they wanted this service, and would be paying for much higher speeds. Mayor Stevenson said the residents that say they don't want it, but later see that their current provider's bill takes a nosedive, they would still be saving money. Mayor Stevenson said all of the progressive cities were trying to figure out how to get fiber into their communities because of how important it would be over the next 30 years.

Councilmember Francis said the nice thing about this proposal was that now the risk would shift to Macquarie. He said after the UTOPIA outage this week, he felt that if they didn't find a solution soon, UTOPIA would go completely dark, and the cities would either charge the \$8.30 fee with no service, or increase property taxes.

Councilmember Brown said she had two people living in her home and she paid the same for basic water service as everyone else; she paid the same amount for basic garbage as everyone else, even though most weeks her garbage can wasn't even half full. She said even though Councilmember Francis' family of six people used a lot more water, and produced a lot more garbage than her family, they paid the same basic rate. Councilmember Brown said except in the summer with lawn watering, most homes didn't go over the basic water amount; they all paid the same amount even though one household might use a lot more water than another household. She said they might produce a lot more garbage, but they were charged the same basic fee.

Councilmember Brown said years ago when water systems were first put in, there were probably a lot of people that said they had a well and didn't need the water to go past their house, and they wouldn't want to be connected to it. She said she imagined that there were people that said they didn't need the garbage picked up in front of their house; the City had to look at this as a product that might be ahead of its time compared to what most cities would be able to provide for their citizens. Councilmember Brown said if you went back to the Ma Bell time, when she only had one choice of what company she could get her phone service from, the price was the price and there was no choice in the matter. She said when Ma Bell broke up, there were a lot more choices. Councilmember Brown said this network would provide her a lot of choices for a landline, internet, or cable; and if in two years she decided that she didn't like the company she chose, she could choose another company without having to change the hardware to her home.

Councilmember Petro said knowing that Layton City was one of the first cities behind UTOPIA, and that it had very little fiber installed, where was Layton ranked as a priority for getting the fiber in and running.

Mr. Hann said if this went ahead, they should be able to close on the transaction by the end of the year. He said they were planning on a 30-month rollout of the network, and to achieve that in 30 months they would be building in all 11 cities at the same time. Mr. Hann said they would be doing 200 addresses a day across the 11 cities. He said there were about 50,000 addresses that required very little engineering, or very little additional construction work to build out because they were already close to the core fiber that was installed. Mr. Hann said they were still working out their detailed footprint; obviously they were looking at a footprint that was most cost effective in terms of the build out. He said they were not looking at particularly prioritizing cities according to how they had or had not been built out in the past. Mr. Hann said UTOPIA could certainly ask them to take that into account. He said the key point was that they were guaranteeing that everyone would be built out, and it would happen within 30 months.

Mr. Lee said with 200 addresses being passed per day, in order for contractors to not be falling over each other, they would be running multiple crews in multiple areas at the same time.

Councilmember Brown said Mr. Hann had indicated that there had been several cities interested in joining the network. She said the existing cities had to be a priority over any other cities that would be joining.

Mr. Hann said the existing cities would be a priority.

Councilmember Freitag said the presentation showed that about 65% of the fiber would be underground and 35% would be overhead. He said in the past, UTOPIA had struggled with getting on aerial poles; how would that be handled now.

Mr. Hann said they had already been in extensive discussions with Rocky Mountain Power and other owners of poles they would need access to, and they were making very good progress.

Mr. Lee said they had received a verbal okay from Rocky Mountain Power that they would not have an issue. He said since this was treated as a utility, they had the ability to raise their own poles.

Councilmember Petro asked how they determined if they were going overhead or underground.

Mr. Hann said they would be going through detailed design through Milestone 2. By the time they reached commercial agreement on the transaction they would know substantially what their rollout plan would be.

Councilmember Brown said with UTOPIA, part of that decision was based on whether the electrical line ran overhead or was underground. She said she would imagine that that would be the same thing.

Mr. Hann said it would be a similar issue.

Councilmember Petro asked Mr. Hann to elaborate on the timeframe and costs of Milestones 3 and 4.

Mr. Hann said the intention was that by the end of Milestone 2, they would be able to get firm pricing from the contracting parties, and they would be able to fix the utility fee. He said Milestone 2 was relatively long and relatively expensive; Milestone 3 was relatively cheaper. Mr. Hann said at the end of Milestone 3 they would be reaching, with the cities, commercial close where they would effectively be agreeing to the deal subject to financing. He said they would then go to the financial markets to finance the commercial deal, and the cities remaining risk that would be shared with Macquarie would be the risk of interest rate changes during that period. Mr. Hann said Milestone 4 was expensive because lenders had their legal counsel that would want to review all of the documentation; they would want to have their engineers look at the solution. He said he didn't have the exact amount, but he recalled that Milestones 3 and 4 were around another \$1,000,000 in total expenditure. Mr. Hann said that expenditure was Macquarie's responsibility; the cities only reimbursed Macquarie if they changed their mind. He said hopefully the cities wouldn't change their mind once they got to the end of the transaction. He said that would be completed in 6 ½ months. Mr. Hann said by the time they reached the close of the transaction, the cost would be between 2 ½ and 3 million dollars.

Councilmember Freitag said in the tentative budget for next year, the City was proposing to use 4.466 million dollars in fund balance. He said it was costing 2.5 million dollars a year to fund the UTOPIA debt. Councilmember Freitag said at some point those lines would cross where the City wouldn't have the necessary fund balance unless there was some new source of revenue. He said one had to consider what could be done to close that gap; the City was looking at 2 ½ million dollars with a 2% increase a year for the next 30 years. Councilmember Freitag said the City had had to rely on fund balance over the past few years more than it wanted to. He said the problem was to find that 2 ½ million dollars, whether it was a good or bad decision in the past.

Councilmember Freitag said the way it worked in any municipality was that any decision made by the prior leadership ended up getting paid by everyone in the future going forward, whether that was bonding for parks or building, or any other expense. He said one way or the other, the City would get to a point of having to come up with that 2 ½ million dollars, and it wouldn't be an opt in/opt out option; everyone would have to pay for it. Councilmember Freitag said the current cost of \$9 was less than the proposed

\$18 fee, but the residents would get absolutely nothing for it. He said in his mind the question was if the additional \$9 a month worth it for what they were trying to accomplish; he didn't know another option; \$9 a month for nothing was pretty hard to swallow.

Councilmember Francis said he understood that Mayor Cutler had slides that compared services. He said Century Link advertised up to 5 Mbps, but if it was clocked it wasn't even close to that amount. Councilmember Francis asked for a real time analysis of what citizens were really getting from other service providers, and what they would be getting with this network.

Mr. Hann said he would get Mayor Cutler's slides that showed that information. He said Mike Lee could speak better to what up to 5 Mbps meant.

Mr. Lee explained what other service providers were providing today. He said for DSL it depended on how far you were from the central office, and how oversubscribed the central office was. Mr. Lee said cable was contingent on how many other customers were connected to the same node. He said there was huge disparity across the footprint; providers were very secretive about their services.

Mr. Hann said Macquarie was an effective long term owner of infrastructure in large part because their investors were large U.S. pension funds like insurances companies; people that wanted to make 30 year investments that were stable. He said because they had a good reputation, they were able to borrow in the market fairly cheaply. Mr. Hann said taking into account the equity investment and the debt they would raise, their cost of capital was approximately 5.9% for the funding they were assuming to pay with that utility fee. He said the cities' cost of capital for the \$8.30 was 7%. Mr. Hann said they were beating the cities' cost of capital and taking all of the risk.

Mayor Stevenson thanked Mr. Hann for his time.

Mr. Hann said they would be happy to come back and answer any additional questions.

**INTERLOCAL COOPERATION AGREEMENT WITH DAVIS COUNTY FOR ANIMAL CONTROL SERVICES – RESOLUTION 14-16**

This item was not discussed.

**COMPENSATION – MEMBERS OF THE PLANNING COMMISSION – RESOLUTION 14-27**

This item was not discussed.

**STREET CONVERSION REQUEST – CANDLEWOOD ESTATES PRIVATE SUBDIVISION – APPROXIMATELY 1100 SOUTH WEST SIDE DRIVE – RESOLUTION 14-30**

This item was not discussed.

**The meeting adjourned at 6:59 p.m.**

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Thieda Wellman, City Recorder